

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 20, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

REBECCA LAVELLE,

Plaintiff,

v.

CL WEST MANAGEMENT LLC, of
CAPITAL CORPROATE
SERVICES, INC., CHERYL
ROBERTS, JODY ROBERTS, JOHN
ROBINSON of CAPITAL
CORPORATE SERVICES, INC.,
UNISEARCH, INC., DWL CL IV,
LLC, WHG LLC, WESTMOUNT
HOSPITALITY GROUP
EXTENDED STAY, HOMETOWN
STUDIOS, REDROOF, INC.,
FREED MANGALJI, President of
Westmont Hospitality, MOEZ
MANGALJI, Principle of Westmont
Hospitality, and JOE WHEELING,
CEO of Westmont Hospitality,

Defendants.

NO. 2:21-CV-0170-TOR

ORDER GRANTING IN PART
DEFENDANT'S MOTION TO
DISMISS SECOND AMENDED
COMPLAINT

ORDER GRANTING IN PART DEFENDANT'S MOTION TO DISMISS
SECOND AMENDED COMPLAINT ~ 1

1 On August 2, 2021, the Court dismissed Plaintiff's amended complaint in
2 part, finding Plaintiff's Age Discrimination Employment Act ("ADEA") claims for
3 discrimination and retaliation against Defendant CL West Management LLC were
4 adequately pled but dismissed Plaintiff's Title VII, Fair Labor Standards Act
5 ("FLSA"), Equal Pay Act ("EPA"), and Washington's EPA claims without
6 prejudice. ECF No. 11. The Court also denied Plaintiff's motion for appointment
7 of pro bono counsel and allowed Plaintiff to file a second amended complaint
8 within 60 days of the order. *Id.* On October 6, 2021, Plaintiff filed her second
9 amended complaint with exhibits. ECF Nos. 15-16.

10 On October 20, 2021, Defendant CL West Management filed the present
11 motion to dismiss. ECF No. 17. Plaintiff filed a response to the motion, along
12 with a notice dismissing some of the named defendants and a motion for issuance
13 of subpoenas. ECF Nos. 20, 23-24. After Defendant filed a reply, Plaintiff filed a
14 surreply. ECF Nos. 22, 26-28. Thereafter, Defendant filed a motion to strike
15 Plaintiff's surreply, and Plaintiff filed a response. ECF Nos. 29-30.

16 In the second amended complaint, Plaintiff asserts claims under Title VII,
17 the ADEA, FLSA, EPA, and the Family Medical Leave Act ("FMLA"). ECF No.
18 15. On February 19, 2021 Plaintiff received her right to sue letter from the Equal
19 Employment Opportunity Commission. ECF No. 19 at 2. The following
20 allegations are drawn from Plaintiff's second amended complaint. ECF No. 15.

1 In May 2019, Plaintiff began her employment with the Hometown Suites
2 hotel in Spokane County after she stayed there with her daughter. ECF No. 15 at
3 4, ¶ 19.

4 On or about June 27, 2019, Plaintiff learned the assistant manager had a
5 problem with her being female. ECF No. 15 at 5, ¶ 23. The assistant manager,
6 Dave, voiced his animosity towards Plaintiff because she had not asked him for
7 advice and he proceeded to create a hostile environment for Plaintiff. ECF No. 15
8 at 5, ¶ 24.

9 In September 2019, Plaintiff received Employee of the Month and positive
10 reviews from hotel guests after making changes to the property and helping raise
11 the hotel ratings score from 2.8 to a 3.8. ECF No. 15 at 4, ¶¶ 20-21. During
12 Plaintiff's employment, the value of the property increased from \$3.7 million to
13 \$4.0 million. ECF No. 15 at 5, ¶ 22.

14 In October 2019, Plaintiff applied for the General Manager position where
15 she had endorsements from co-workers and was seriously considered for the
16 position. ECF No. 15 at 5, ¶ 25. A different candidate, Gary Sawyer, was selected
17 for the position after Dave "detoured" the District Manager from giving Plaintiff
18 the promotion. ECF No. 15 at 5, ¶¶ 25-26. Mr. Sawyer gave Plaintiff permission
19 to stay in the manager apartment at the hotel while he was at training. ECF No. 15
20 at 5, ¶ 26.

1 In November 2019, an off-site corporate manager, not knowing Plaintiff had
2 permission to live on-site, instructed Plaintiff to move out while Mr. Sawyer was
3 absent from the property. ECF No. 15 at 5, ¶¶ 27-28. Various employees were
4 allowed to live on-site during and after the period in which Plaintiff was employed.
5 ECF No. 15 at 5, ¶ 30.

6 On or about December 6, 2019, Defendant WHG harassed Plaintiff
7 relentlessly until she moved her camper. ECF No. 15 at 6, ¶ 31. Plaintiff moved
8 her camper to a location where it was subsequently towed and auctioned. ECF No.
9 15 at 6, ¶¶ 33-34. Other RVs were allowed to remain on site at the hotel. ECF No.
10 15 at 6, ¶ 35.

11 On or about December 10, 2019, the Washington Health Department issued
12 a report of violations to the hotel that required changes to be made within thirty
13 days. ECF No. 15 at 6, ¶ 36. Plaintiff completed these repairs, which required
14 overtime but Defendant WHG manually adjusted Plaintiff's hours that shorted her
15 both overtime and regular hours. ECF No. 15 at 6, ¶¶ 37-38.

16 On or about December 6, 2019, Plaintiff then learned that Defendant WHG
17 was badgering hotel guests for information that would provide a basis to fire
18 Plaintiff. ECF No. 15 at 6-7, ¶ 41. Plaintiff earned a 4.5 out of 5 performance
19 review just days before "the campaign" to remove her began. ECF No. 15 at 8, ¶
20 55.

1 On or about December 14, 2019, Plaintiff heard Mr. Sawyer use phrases
2 such as “God Damn” in front of hotel guests and Plaintiff privately discussed her
3 feelings with him regarding these phrases and his response was “I hate God, not
4 everybody believes in Him.” ECF No. 15 at 6, ¶¶ 39-40.

5 On December 20, 2019, Plaintiff heard Mr. Sawyer ask “Where’s Ol Girl?”
6 and Plaintiff learned that is what he referred to Plaintiff behind her back. ECF No.
7 15 at 7, ¶¶ 44-45. Plaintiff decided to go back to work after lunch without clocking
8 in at the office to avoid Mr. Sawyer and Dave. ECF No. 15 at 7, ¶¶ 43, 46.

9 On or about December 23, 2019, Plaintiff learned her job was posted as an
10 available position on the internet. ECF No. 15 at 7, ¶ 42.

11 On or about December 24, 2019, Mr. Sawyer delivered the write up to
12 Plaintiff for failure to perform and being late after she did not clock in four days
13 prior. ECF No. 15 at 7, ¶ 48, 50. Plaintiff’s statement on the write up is as
14 follows: “Unless everyone else gets write up for being late. I feel that I am being
15 singled out because you are trying to find a reason to fire me to the fact you have
16 my job posted. I do not like you calling me ‘Ol Girl’”. ECF No. 15 at 8, ¶ 52.
17 Plaintiff was the only employee scheduled to work this day, and Plaintiff believes
18 she was scheduled to work on Christmas Eve due to intentional harassment. ECF
19 No. 15 at 7, ¶¶ 50-51. Most employees who are late do not receive write ups. ECF
20 No. 15 at 7, ¶ 49. Following the write-up, Defendant WHG began giving the

1 porter, Brandon, Plaintiff's job duties even though he was not qualified to do
2 repairs. ECF No. 15 at 8, ¶ 56.

3 On or about January 3, 2020, Plaintiff's mother paid for 6 nights for
4 Plaintiff's son to stay at the hotel. ECF No. 15 at 8, ¶¶ 57, 59. When Plaintiff's
5 son tried to extend his stay, the hotel refused and gave him a 5 minute warning to
6 leave. ECF No. 15 at 8, ¶ 60. Plaintiff voluntarily cleaned the room her son stayed
7 in. ECF No. 15 at 8, ¶ 61. After cleaning the room, Plaintiff went to clock in
8 where Mr. Sawyer yelled and lunged at Plaintiff, and issued another write up to
9 Plaintiff for being late. ECF No. 15 at 8-9, ¶ 63.

10 On January 21, 2020, Plaintiff tried to take time off to secure housing, where
11 such appointments were previously acceptable to the prior manager. ECF No. 15
12 at 9, ¶ 64-65. Plaintiff had accumulated paid time off but she was not approved to
13 use it in violation of company policy. ECF No. 15 at 9, ¶ 66. Plaintiff received
14 another write up even though no one else received similar write ups. ECF No. 15
15 at 9, ¶ 67.

16 In January 2020, Plaintiff had a discussion with another employee regarding
17 the possibility that a prostitute was living at the hotel. ECF No. 15 at 9, ¶ 68.
18 Plaintiff was threatened by the girlfriend who was trying to cover up the discovery.
19 ECF No. 15 at 9, ¶ 69. Mr. Sawyer added to the previous reprimand that Plaintiff
20 made unwanted advances on a guest and the guest has since recanted. ECF No. 15

1 at 9, ¶ 70. Plaintiff was initially not given the name of the guest nor was she given
2 an opportunity to defend herself. ECF No. 15 at 9, ¶ 71. Plaintiff has since learned
3 that this false allegation was the product of Defendant WHG's door to door
4 interviews with hotel guests in violation of company policy. ECF No. 15 at 9, ¶
5 72. Plaintiff received her last write up for leaving garbage cans soaking overnight.
6 ECF No. 15 at 9, ¶ 73.

7 Following her termination, Plaintiff's replacement was 40 years old and able
8 to live on the property. ECF No. 15 at 9, ¶ 74. Plaintiff's unemployment benefits
9 were denied based on a fraudulent letter that reported Plaintiff was a part time
10 worker. ECF No. 15 at 10, ¶ 75. Plaintiff appealed, and lost the subsequent
11 hearing that she was unable to attend but Defendants WHG and CL West
12 Management attended the hearing. ECF No. 15 at 10, ¶¶ 77-80.

13 On July 23, 2020, Plaintiff petitioned for a review of the order dismissing
14 her appeal. ECF No. 15 at 10, ¶ 81. Plaintiff asserts the ongoing denial has caused
15 her homelessness and extreme poverty. ECF No. 15 at 10, ¶¶ 82-83.

16 On or about August 17, 2020, Plaintiff attempted to get her job back but
17 Defendant WHG did not hire Plaintiff. ECF No. 15 at 10, ¶ 83. Between August
18 2020 and September 2021, Plaintiff has repeatedly applied for her position with the
19 hotel and has not been hired. ECF No. 15 at 10-11, ¶¶ 83-89.

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DISCUSSION

A. Plaintiff's Motions

As an initial matter, Plaintiff moves to dismiss Defendants Capital Corporate Services, Cheryl Roberts, Jody Roberts, John Robinson, and Unisearch, Inc. under Federal Rule of Civil Procedure 41(a). ECF No. 23. Because there has been no answer or motion for summary judgment filed in this case, Plaintiff may dismiss an action against a defendant without a court order. Fed. R. Civ. P. 41(a)(1)(A)(i). Therefore, based upon Plaintiff's notice, these Defendants are dismissed.

Additionally, Plaintiff moves the Court for issuance of subpoenas under Federal Rule of Civil Procedure 34. ECF No. 24. Plaintiff must engage in the discovery process with opposing counsel prior to seeking Court intervention. *See* Fed. R. Civ. P. 34 (a) ("A party may serve on any other party a request within the scope of Rule 26(b)"). Therefore, Plaintiff's motion for issuance of subpoenas is denied.

B. Failure to Comply with Court Order

Defendant first moves to dismiss Plaintiff's second amended complaint on the grounds that Plaintiff failed to comply with the Court's requirement that she file her second amended complaint within 60 days. ECF No. 17 at 10. Plaintiff was provided 60 days from the date of the August 2, 2021 order to file. ECF No.

11. Plaintiff filed a second amended complaint, which was due on October 1, 2021, on October 6, 2021. ECF No. 15.

A court may dismiss an action for failure to comply with any order from the court. Fed. R. Civ. P. 41(b). In determining whether to dismiss under such circumstances, the Court weighs the following factors: (1) the public's interest in expeditious resolution of litigation, (2) the Court's need to manage its docket, (3) the risk of prejudice to the defendant, (4) the public policy favoring disposition of the case on the merits, and (5) the availability of less drastic alternatives. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992), *as amended* (May 22, 1992). In cases involving *pro se* litigants, the court must provide notice of the complaint's deficiencies prior to dismissing the action so that the *pro se* litigant has an opportunity to amend the complaint effectively. *Id.* at 1261.

Here, Plaintiff encountered issues filing in the electronic system, so she mailed her second amended complaint to the Clerk's office on October 5, 2021, which arrived and was filed on October 6, 2021. ECF No. 26 at 3; ECF No. 15-1 at 1. Therefore, Plaintiff's filing was late. While there is an interest in expeditious litigation and the Court needs to manage its docket, Plaintiff filed with minimal delay. Due to the minimal delay, there is little prejudice to Defendant CL West Management LLC. Moreover, the Court's substantive hearing on the motion to dismiss promotes the public policy favoring disposition on the merits and provides

1 a less drastic alternative than a procedural dismissal. Therefore, a dismissal for
2 failure to comply with the Court's order is not warranted under these
3 circumstances.

4 **C. Motion to Dismiss Standard**

5 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may
6 move to dismiss the complaint for "failure to state a claim upon which relief can be
7 granted." "The burden of demonstrating that no claim has been stated is upon the
8 movant." *Glanville v. McDonnell Douglas Corp.*, 845 F.2d 1029 (9th Cir. 1988).

9 A motion to dismiss for failure to state a claim will be denied if the plaintiff alleges
10 "sufficient factual matter, accepted as true, to 'state a claim to relief that is
11 plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
12 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "The burden of demonstrating
13 that no claim has been stated is upon the movant." *Glanville v. McDonnell*
14 *Douglas Corp.*, 845 F.2d 1029 (9th Cir. 1988).

15 While the plaintiff's "allegations of material fact are taken as true and
16 construed in the light most favorable to the plaintiff" the plaintiff cannot rely on
17 "conclusory allegations of law and unwarranted inferences ... to defeat a motion to
18 dismiss for failure to state a claim." *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399,
19 1403 (9th Cir. 1996) (citation and brackets omitted). That is, the plaintiff must
20 provide "more than labels and conclusions, and a formulaic recitation of the

1 elements.” *Twombly*, 550 U.S. at 555. When deciding, the Court’s review is
2 limited to the complaint, documents incorporated into the complaint by reference,
3 and judicial notice. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d
4 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551
5 U.S. 308, 322 (2007)).

6 *1. Title VII*

7 Defendant moves to dismiss Plaintiff’s potential Title VII claim on the
8 grounds that she has failed to exhaust her federal administrative remedies. ECF
9 No. 17 at 13-14. In response, Plaintiff produced a right to sue letter. ECF No. 19.

10 Under Title VII, a plaintiff may not bring a civil action until the Equal
11 Employment Opportunity Commission (“EEOC”) issues notice of the right to sue,
12 and thereafter the claimant must file the civil suit within 90 days of receipt of
13 EEOC’s notice. 42 U.S.C. § 2000e-5(f)(1).

14 Here, Plaintiff received a Notice of Right to Sue letter from the EEOC on
15 February 19, 2021 and filed within 90 days from the receipt of the letter. ECF No.
16 19 at 2; ECF No. 1. As a result, Plaintiff administratively exhausted her federal
17 remedies for her Title VII claim. Because Defendant moved to dismiss the claim
18 on this basis alone, the Court does not address the substantive merits of Plaintiff’s
19 Title VII claims.

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1 2. *FLSA*

2 The FLSA sets the minimum wage to not less than \$7.25 per hour. 29
3 U.S.C. § 206(a). To claim improper compensation under the FLSA, the Plaintiff
4 must allege that the wages fell below the statutory minimum in a given workweek.
5 *Id.*; 29 C.F.R. § 776.4; *Douglas v. Xerox Business Services, LLC*, 875 F.3d 884,
6 890 (9th Cir. 2017). Additionally, the FLSA requires employers to pay overtime
7 where an employee works over 40 hours in a given workweek. 29 U.S.C. § 207.
8 “[A]t a minimum, a plaintiff asserting a violation of the FLSA overtime provisions
9 must allege that she worked more than forty hours in a given workweek without
10 being compensated for the hours worked in excess of forty during that week.”
11 *Landers v. Quality Commc’ns, Inc.*, 771 F.3d 638, 645 (9th Cir. 2014), *as amended*
12 (Jan. 26, 2015). In *Landers*, the Ninth Circuit dismissed the plaintiff’s FLSA
13 overtime allegations where the plaintiff “failed to provide ‘sufficient detail about
14 the length and frequency of [his] unpaid work to support a reasonable inference
15 that [he] worked more than forty hours in a given week.’” *Id.* at 646 (internal
16 citation omitted).

17 First, Plaintiff alleges she did not get holiday pay for hours worked on
18 Christmas Eve, Christmas, or New Year’s Eve (the Court assumes for the year
19 2019) in violation of the FLSA. ECF No. 15 at 12, ¶ 103. There is no requirement
20

1 under the FLSA that Plaintiff receive holiday pay. *See* 29 U.S.C. § 201 *et seq.*

2 Therefore, this allegation fails to state an FLSA minimum wage violation.

3 Second, Plaintiff alleges she worked every Sunday (except one) without pay
4 and with her supervisor’s knowledge from May 2019 to January 2020. ECF No.
5 15 at 12, ¶ 104. While Plaintiff alleges she worked most Sundays unpaid, she does
6 not allege that the unpaid hours, when averaged with the paid hours in a given
7 workweek, resulted in payment less than the federal minimum wage. 29 U.S.C. §
8 206(a); *Adair v. City of Kirkland*, 185 F.3d 1055, 1062 n.6 (9th Cir. 1999) (“[E]ven
9 though it is uncompensated, the employees are still being paid a minimum wage
10 when their salaries are averaged across their actual time worked.”). Therefore, this
11 allegation fails to state an FLSA minimum wage violation.

12 Third, Plaintiff alleges Gary Sawyer altered her January 7, 2020 hours
13 because the “numbers are wrong” and it “should not have only the hours from the
14 last two weeks.” ECF No. 15 at 13, ¶ 106. The Court is unsure whether this is a
15 minimum wage or overtime claim under the FLSA. In any event, this allegation
16 fails to state sufficient detail about the unpaid or overtime work to support a
17 reasonable inference of an FLSA violation.

18 Fourth, Plaintiff alleges Plaintiff worked 186 hours in three weeks in
19 January 2020 as demonstrated by her second paycheck of the new year. ECF No.
20 15 at 13, ¶ 107. While Plaintiff alleges she worked overtime during the first pay

1 period of January 2020, she does not allege that she was not paid for any overtime
2 during that period. *Id.*; *see also* ECF No. 16 at 12. Plaintiff has failed to plead
3 sufficient detail that she was not paid for the hours worked in excess of forty hours.
4 *Landers*, 771 F.3d at 643. Therefore, this allegation fails to state an FLSA
5 overtime wage violation.

6 In sum, none of Plaintiff's allegations support a claim under the FLSA for
7 violation of either the minimum wage or maximum wage provisions. Therefore,
8 Plaintiff's FLSA claims must be dismissed with leave to amend.

9 3. *EPA*

10 The EPA is an amendment to the FLSA that was created to ensure that
11 "equal work will be rewarded by equal wages." *Rizo v. Yovino*, 950 F.3d 1217,
12 1222 (9th Cir.), *cert. denied*, 141 S. Ct. 189 (2020) (internal quotation and citation
13 omitted). The EPA, by way of the FLSA, prohibits discrimination. *See* 29 U.S.C.
14 § 215(a)(2)-(3). Regarding sex discrimination, the EPA provides:

15 No employer having employees subject to any provisions of this
16 section shall discriminate, within any establishment in which such
17 employees are employed, between employees on the basis of sex by
18 paying wages to employees in such establishment at a rate less than
19 the rate at which he pays wages to employees of the opposite sex in
20 such establishment for equal work on jobs the performance of which
requires equal skill, effort, and responsibility, and which are
performed under similar working conditions. . . .

1 29 U.S.C. § 206(d)(1). The plaintiff bears the burden of establishing a *prima facie*
2 case of discrimination that employees of different sex were paid different wages
3 for equal work. *Stanley v. Univ. of S. Cal.*, 178 F.3d 1069, 1073-74 (9th Cir.
4 1999). The plaintiff must demonstrate that the compared jobs – not the individuals
5 – are “substantially equal.” *Stanley*, 178 F.3d at 1074. Under the “substantially
6 equal” analysis, the court looks to: (1) whether the jobs share a common core of
7 tasks; and (2) whether the additional tasks make the jobs substantially different.
8 *Id.*

9 Here, Plaintiff alleges (1) “females are paid less for the same work and the
10 location in Spokane, Wa” and (2) “her position paid less as a female than the
11 males, regardless of her qualifications.” ECF No. 15 at 13, ¶¶ 113-115. In setting
12 forth these allegations, Plaintiff seeks the wage information for three individuals,
13 but Plaintiff does not state whether these individuals are male, are employees of
14 Defendants, had wages in excess of Plaintiff’s, and had jobs substantially equal to
15 Plaintiff’s. ECF No. 15 at 14, ¶ 116. Plaintiff relies on mere conclusions and a
16 formalistic recitation of the elements to support her claim. *Twombly*, 550 U.S. at
17 555. As a result, Plaintiff fails to sufficiently state a claim under the EPA.

18 Therefore, Plaintiff’s EPA claim must be dismissed with leave to amend.

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1 4. *FMLA*

2 Defendant moves to dismiss Plaintiff's FMLA claim where "Plaintiff alleges
3 no facts that even remotely support this cause of action." ECF No. 17 at 18. In
4 response, Plaintiff agrees to the dismissal of her FMLA claim. ECF No. 20 at 2.
5 Therefore, Plaintiff's FMLA claim is dismissed with leave to amend.

6 **D. Motion to Strike**

7 Generally, under this Court's scheduling orders, no supplemental response
8 or supplemental replies to any motion may be filed unless the Court grants a
9 motion to file such documents. However, no scheduling order has been issued in
10 this case. The Court reminds Plaintiff to review Local Civil Rule 7, which
11 provides for one response memorandum for each motion.¹

12 The Court finds it unnecessary to strike Plaintiff's surreply and exhibits. In
13 any event, the Court's review of the allegations is limited to the second amended
14 complaint, documents incorporated to the second amended complaint by reference,
15 and judicial notice. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d at
16 1061. To the extent that Plaintiff raises new allegations and exhibits, the material
17

18
19 ¹ [Local Civil Rules Eastern District of Washington | Eastern District of](#)
20 [Washington \(uscourts.gov\)](#)

1 is not dispositive to the current Order. The Court denies Defendant's motion to
2 strike as moot.

3 **E. Miscellaneous Defendants**

4 A claim is legally frivolous under § 1915(e)(2)(B)(i) when it lacks an
5 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
6 (1989), *superseded by statute*, 28 U.S.C. §1915(d), *as recognized in Lopez v.*
7 *Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000). The Court may, therefore, dismiss a
8 claim as frivolous where it is based on an indisputably meritless legal theory or
9 where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327.

10 Plaintiff makes the general assertion that all named Defendants are
11 "responsible in some manner for Plaintiff's injuries and occurrences herein
12 alleged." ECF No. 15 at 4, ¶ 17. While Plaintiff alleges she was jointly employed
13 by CL West Management LLC, WHG LLC, Westmont Hospitality Group,
14 Hometown Suites, and/or Red Roof Inns, ECF. No. 15 at 2, ¶ 5, the second
15 amended complaint is devoid of any allegations against Defendants DWL CL IV,
16 LLC, Freed Mangalji, Moez Mangalji, and Joe Wheeling. ECF No. 15 at 1.
17 Without any specific allegations, any legal claims against these Defendants are
18 clearly baseless. Therefore, the Court dismisses Defendants DWL CL IV, LLC,
19 Freed Mangalji, Moez Mangalji, and Joe Wheeling.

1 **F. Opportunity to Amend**

2 Unless it is absolutely clear that amendment would be futile, a *pro se* litigant
3 must be given the opportunity to amend her complaint to correct any deficiencies.
4 *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). Plaintiff may submit a third
5 amended complaint within **sixty (60) days** of the date of this Order which must
6 include sufficient facts to establish federal subject-matter jurisdiction and articulate
7 causes of action. *See Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th
8 Cir. 1980) (citations omitted).

9 Plaintiff's third amended complaint shall consist of a **short and plain**
10 statement showing that she is entitled to relief and alleging with specificity:

- 11 (1) the specific conduct or actions of each Defendant demonstrating how each
12 caused or personally participated in causing a deprivation of Plaintiff's
13 rights; and
14 (2) the specific protected rights of which Plaintiff was deprived.

15 Further, Plaintiff shall set forth her factual allegations in separate numbered
16 paragraphs. THIS THIRD AMENDED COMPLAINT WILL OPERATE AS A
17 COMPLETE SUBSTITUTE FOR (RATHER THAN A MERE SUPPLEMENT
18 TO) THE SECOND AMENDED COMPLAINT. The third amended complaint
19 must be legibly rewritten or retyped in its entirety; it should be an original and not
20 a copy; it may not incorporate any part of the first or second amended complaint by

reference; and IT MUST BE CLEARLY LABELED THE “THIRD AMENDED COMPLAINT” and case number 2:21-CV-0170-TOR must be written in the caption. PLAINTIFF IS CAUTIONED IF SHE FAILS TO FILE WITHIN 60 DAYS AS DIRECTED, THE CASE WILL ONLY PROCEED AS TO THE TITLE VII AND ADEA CLAIMS.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant CL West Management LLC’s Motion to Dismiss Second Amended Complaint Pursuant to FRCP 41 and 12(b)(6) (ECF No. 17) is **GRANTED in part** and **DENIED in part**.
2. The claims asserted in Plaintiff’s Second Amended Complaint (ECF No. 15) are **DISMISSED in part**. Plaintiff’s FMLA, FLSA, and EPA claims are **DISMISSED without prejudice and WITH LEAVE TO AMEND**.
3. Pursuant to Plaintiff’s Notice under Federal Rule of Civil Procedure 41(a)(1)(A)(i), Defendants CAPITAL CORPORATE SERVICES, CHERYL ROBERTS, JODY ROBERTS, JOHN ROBINSON, and UNISEARCH, INC. are **DISMISSED without prejudice**. Additionally, Defendants DWL CL IV, LLC, FREED MANGALJI, MOEZ MANGALJI, and JOE WHEELING are **DISMISSED without prejudice**.
4. Plaintiff’s Motion for Issuance of Subpoenas (ECF No. 24) is **DENIED**.

- 1 5. Defendant CL West Management LLC's Motion to Strike Plaintiff's
2 Surreply (ECF No. 29) is **DENIED as moot**.
- 3 6. The Clerk of Court shall **TERMINATE** Defendants CAPITAL
4 CORPORATE SERVICES, CHERYL ROBERTS, JODY ROBERTS,
5 JOHN ROBINSON, UNISEARCH, INC., DWL CL IV, LLC, FREED
6 MANGALJI, MOEZ MANGALJI, and JOE WHEELING from this
7 action and adjust the docket sheet accordingly.
- 8 7. Plaintiff may file a Third Amended Complaint **within sixty (60) days** of
9 the date of this Order. If Plaintiff fails to file within 60 days as directed,
10 the case will **only** proceed on the Title VII and ADEA claims.
- 11 8. The Clerk of Court shall issue Summons for Defendants WHG LLC,
12 Westmont Hospitality Group Extended Stay, Hometown Studios, and
13 Red Roof Inc., prepare the USM-285 forms, the Notices of Lawsuit and
14 Requests for Waiver of Service of Summons form AO-398, and two
15 Waiver of Service forms AO-399 for each Defendant, and transmit them,
16 along with copies of the Second Amended Complaint, ECF No. 15, and
17 copies of this Order to the U.S. Marshals Service.
- 18 9. The United States Marshal, in compliance with Fed. R. Civ. P. 4(c)(3)
19 and (d), shall send, by First Class Mail, copies of the Summons, the
20 Second Amended Complaint (ECF No. 15), and this Order, upon each

1 Defendant at the addresses Plaintiff provided in paragraphs 11, 12, and
2 13 of the Second Amended Complaint (ECF No. 15): WHG LLC,
3 Westmont Hospitality Group Extended Stay, Hometown Studios, and
4 Red Roof Inc., together with a Notice of Lawsuit and Request for Waiver
5 of Service of Summons, two copies of the Waiver of Service of
6 Summons and a return envelope, postage prepaid, addressed to the
7 sender. The costs of mailing shall be advanced by the United States.

8 10. The United States Marshal's office shall retain the original Summons in
9 the event Defendants WHG LLC, Westmont Hospitality Group Extended
10 Stay, Hometown Studios, and Red Roof Inc. refuse to waive service or
11 does not waive service in a timely manner, thereby necessitating personal
12 service pursuant to Fed. R. Civ. P. 4(e). Defendants WHG LLC,
13 Westmont Hospitality Group Extended Stay, Hometown Studios, and
14 Red Roof Inc. shall have thirty (30) days after the request is sent to return
15 the waiver (Fed. R. Civ. P. 4(d)(1)(F)) and if they fail to do so within that
16 time, the United States Marshal will effect personal service pursuant to
17 Fed. R. Civ. P. 4(e) and/or 4(j)(2). In the absence of good cause, if
18 Defendants WHG LLC, Westmont Hospitality Group Extended Stay,
19 Hometown Studios, and Red Roof Inc. fail to return the Waiver of
20

1 Service of Summons, they will be required to pay the expenses of
2 service.


3 11. Defendants WHG LLC, Westmont Hospitality Group Extended Stay,
4 Hometown Studios, and Red Roof Inc. shall individually file an answer
5 or otherwise respond to Plaintiff's claims contained in the Second
6 Amended Complaint, which have not already been dismissed by this
7 Court, within sixty (60) days after mailing (if formal service is waived),
8 or forty-five (45) days after service if service is not waived. Failure to so
9 respond may result in entry of a default judgment, pursuant to LCivR 55.
10 A Notice of Appearance is not an adequate response.

11 12. The Clerk of Court shall set a case management deadline **sixty (60) days**
12 after the date of this Order.

13 The District Court Executive is directed to enter this Order and forward a
14 copy to Plaintiff, Defendant CL West Management LLC, and to the United States
15 Marshal's Office.

16 DATED December 20, 2021.




THOMAS O. RICE
United States District Judge